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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

X

VIE LUXE INTERNATIONAL, LLC and  
MARJORIE GUBELMANN RAEIN

**Docket # 08 CV 5023 (LAP)**

Plaintiffs,

**NOTICE OF  
PRE-ANSWER MOTION  
PURSUANT TO F.R.C.P.  
RULE 12(b)(1) and (6)**

-against-

DANIEL BENEDICT

Defendant.

X

To: Mark J. Hyland, Esq. (MH-5872)  
Anne C. Patin, Esq. (AP-6155)  
Julia C. Spivack, Esq. (JS-6054)

SEWARD & KISSEL, LLP  
One Battery Park Plaza  
New York, New York 10004

PLEASE TAKE NOTICE that upon the annexed Affirmation of David C. Holland, Esq., affirmed to on the 18<sup>th</sup> Day of June, 2008; Affidavit of Daniel Benedict, sworn to on the 18<sup>th</sup> Day of June, 2008; and the exhibits annexed thereto, Defendant, Daniel Benedict, through his attorneys, The Law Offices of Michael Kennedy, P.C., will move this Court, The United States District Court for the Southern District of New York, located at 500 Pearl Street, New York, New York 10007, on Thursday, July 10, 2005, at 9:30 o'clock in the forenoon, or as soon thereafter as counsel may be heard, in this Pre-Answer Motion for an Order dismissing this action pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6). Defendant make this motion on the following grounds:

1. The Court lacks subject matter jurisdiction under F.R.C.P. 12(b)(1) as there are no facts that support Plaintiffs' claim of a federal question jurisdiction under 18 U.S.C. §1030.
2. Plaintiffs have failed to state a claim upon which relief can be granted.

3. Upon a determination of whether this Court has subject matter jurisdiction over this case, Defendant respectfully requests that this Court decline to exercise its discretion and supplementary jurisdiction over the state-based claims

Dated: New York, New York  
June 18, 2008

The Law Offices of Michael Kennedy, P.C.

/s/

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